

GENERAL RELEASE, WAIVER AND SETTLEMENT OF ALL CLAIMS

This is a General Release, Waiver and Settlement of all Claims (the "Release") entered into this ____th day of January, 2013 by George E. Vondohlen ("Vondohlen") releasing and waiving any and all claim or claims he may have against Defendants, Robert Dolins ("Dolins"), Michael Piantedosi ("Piantedosi"), Charles Wentworth ("Wentworth") and the CITY OF WALTHAM (collectively referred to as "the Defendants"), a municipal corporation with an address of 610 Main Street, Waltham, Massachusetts 02452 ("the City"), for itself as well as on behalf of its officers, agents or employees ("the City"), in full settlement of the claims and allegations that were, or could have been, raised in the matter of *Vondohlen v. City of Waltham, et al.*, now pending in the United States District Court for the District of Massachusetts and bearing docket number 11-11625-MLW.

WHEREAS, Vondohlen, has alleged that members of the Waltham Police Department used excessive or improper force when arresting him on or about June 6, 2009, along with various related claims;

WHEREAS, the City, Dolins, Piantedosi, and Wentworth deny any and all allegations of wrongdoing whatsoever, further alleging that Vondohlen's claims are factually and legally without merit;

WHEREAS, the Parties have agreed, in a spirit of cooperation and in order to avoid the burden and excessive expense of extensive and prolonged legal proceedings, that it is in their mutual interest to resolve, fully and completely, any and all claims and disputes between and among them, including all claims relating to, concerning or arising out of the legal action entitled *Vondohlen v. City of Waltham, et al.*, now pending in the United States District Court for the District of Massachusetts and bearing docket number 11-11625-MLW.

NOW THEREFORE, without adjudication of any of these matters on the merits, and without this Agreement being an admission or evidence of liability, or an admission of any fact related to these matters, or a waiver by the City, Piantedosi, and Wentworth of any defenses, and in consideration of the foregoing and the mutual promises set forth herein, and for other good and valuable consideration hereby acknowledged, Vondohlen agrees as follows:

1. Lump Sum Payment. The City shall pay to Vondohlen consideration in the amount of a one-time payment of Forty-Five Thousand Dollars (\$45,000.00) which sum shall include any claims for costs or attorney's fees. It is understood and agreed that such payment will be the only compensation respectively received by Vondohlen, his relatives, heirs, agents, attorneys or any other person or entity, as a result of this Agreement. It is understood and agreed that the City bears no further responsibility for any costs, fees or expenses, including any claim for attorneys' fees pursuant to 42 U.S.C. § 1988 or any other provision of federal or state law. Additionally, it is understood and agreed that Vondohlen shall be responsible for any and all taxes, liens, repayments, medical or healthcare obligations or reimbursements arising out of the subject matter of this Release and the above action, including but not limited to Vondohlen's putative medical/hospital expenses approaching the above settlement amount.
2. Stipulation of Dismissal. On or about the date of the final execution of this Release, the Parties shall file a Stipulation of Dismissal with prejudice in the matter of *Vondohlen v. City of Waltham, et al.*, now pending in the United States District Court for the District of

Massachusetts and bearing docket number 11-11625-MLW, dismissing with prejudice the case in its entirety as against all named defendants, individually and in their official capacities. Said stipulation shall state that all claims asserted in the said action are to be dismissed with prejudice, without legal fees, expenses or costs imposed upon any party (expressly stating that each party shall bear all of their own attorney's fees, costs or expenses, and shall have absolutely no obligation with respect to any attorneys' fees, costs or expenses of any other litigant), and with Vondohlen waiving all rights of appeal.

3. Vondohlen Release. For the good and valuable consideration as referenced in Paragraph One of this Release, receipt of which is hereby acknowledged, Vondohlen, for himself as well as on behalf of his agents, heirs, executors, administrators, predecessors, successors, assigns, insurers, legal representatives, attorneys and any other individual or entity acting for them or in furtherance of their interests, do hereby remise, release and forever discharge the above Defendants and the City of Waltham, including all its elected officials, agents, servants, employees, successors, assigns and attorneys (individually and in every other legal capacity), from all debts, demands, actions, causes of action, suits, dues, sum and sums of money, accounts, reckonings, bonds, specialties, covenants, contractors, controversies, agreements, promises, doings, omissions, variances, damages, extents, executions and liabilities and any and all other claims of every kind, nature and description whatsoever, both in LAW and EQUITY, including any claims for attorneys fees and costs, Vondohlen has or ever had from the beginning of the world to the date on which this Agreement is executed, or will ever have on account of any losses, costs, expenses, damages, fees, suffering, illnesses or injuries allegedly sustained or incurred, or which have yet to be sustained or incurred, by Vondohlen concerning, by reason of or as a result of, any events, accidents or incidents that occurred on or about June 6, 2009, as more fully described in the matter of *Vondohlen, et al. v. City of Waltham, et al.*, now pending in the United States District Court for the District of Massachusetts and bearing docket number 11-11625-MLW.
- a. Vondohlen hereby understands, acknowledges and agrees, affirms and warrants, that the Release set forth in the preceding paragraph is, and is intended to be, a full, final and complete Release of any joint or common liability of the Defendants and the City and all of its agents, officials or employees, whether named or unnamed in the pending litigation, to Vondohlen with respect to all injuries and damages sustained or incurred, or which have yet to be sustained or incurred, by reason of or as a result of the above said events, accidents or incidents.
- b. This Release is in compromise of, and terminates, all claims against the Defendants, the City and all of its agents, officials or employees, for injuries or damages of whatever nature or description, whether known or unknown, and in any way arising out of or related to or which may hereinafter in any way arise out of or relate to, said events, accidents or incidents.
- c. Vondohlen specifically acknowledges that this is a release of all claims, whether discovered or undiscovered, relating to said event(s), accident(s) or incident(s). Vondohlen hereby acknowledges, agrees and understands that, if after the date of this Release, Vondohlen's injuries or damages turn out to be more severe or different than he now believes them to be, or that injuries or damages of which he is not now aware manifest themselves, by signing this Release there has been an acceptance of such risks

and a complete waiver of any right to seek further money from, or otherwise to assert any claim or demand against, the Defendants or the City of Waltham and all of its agents, officials or employees, whether named or unnamed in the pending litigation.

- d. In further consideration for the payment specified in this Release, Vondohlen hereby represents, warrants and agrees that he: (1) will satisfy and pay from the proceeds of this settlement any existing hospital, medical or any other liens or claims relating to or arising out of said events, accidents or incidents; (2) will satisfy and pay any other lien or claim asserted against, or which may be asserted against, the proceeds of this settlement from the proceeds of this settlement; and, (3) will indemnify, hold harmless and defend the City of Waltham from any such lien or claim.
 - e. Vondohlen hereby agrees and acknowledges, instructs, permits and authorizes the City of Waltham to make the aforementioned payment by issuing a check in the amount earlier referenced made payable to: "George E. Vondohlen and Frederick V. Gilgun, his attorney."
 - f. Vondohlen understands and expressly agrees that acceptance of the above amount is in full accord and satisfaction of a disputed claim and that payment of the above amount is not an admission of liability.
 - g. Vondohlen further acknowledges that he understands this release and has participated through legal counsel of his choosing in the negotiations leading to this settlement; has had the benefit of consultation and advice of said counsel regarding the settlement of this legal action, and regarding the terms and effect of this document; and fully understands and voluntarily agrees to the settlement and to the terms of this document.
 - h. Vondohlen also assumes the risk, and agrees to hold the City harmless, from any claim which may be asserted because the legal, tax or other consequences of this Release become other than that which currently is anticipated.
- 4. Interpretation and Construction. This Release shall be construed and interpreted in accordance with the laws and authorities of the Commonwealth of Massachusetts.
 - 5. Entire Agreement. This Release constitutes the entirety of the understanding between and among the Parties with regard to the subject matter set forth herein and supersedes all prior and contemporaneous agreements, understandings and representations between or among the Parties, oral or written, concerning the subject matter hereof. This Release shall be binding on Vondohlen and inure to the benefit of the Defendants' successors, heirs and assigns.
 - 6. Fees, costs and expenses. The Parties understand and agree that each shall bear all of his or its own attorneys' fees, costs or expenses related, in any way, to the matters referred to in this Agreement. The Parties understand and agree that each shall have absolutely no obligation with respect to any attorneys' fees, costs or expenses of any other litigant.
 - 7. Non-admission. This Release and Settlement reflects the resolution and compromise of disputed claims and, as indicated, is not to be construed, in any fashion, as an admission of liability by the City, by which liability is denied expressly, as an admission as to any fact or waiver of any defense, or as a concession that Vondohlen's claims have any merit. It is

G.V.

understood that this Release and Settlement is made solely in order to avoid the costs and expenses of further litigation or future claims, as well as the inherent uncertainties associated with such matters. Further, the terms of this Release and Settlement are agreed not to be admissible or used in any forum for any reason, other than for matters involving enforcement of the terms of this Agreement or otherwise as required by law.

8. Invalidity. If any of the provisions herein are determined to be invalid by a court or government agency of competent jurisdiction, the invalid provisions shall be severed from the Agreement and all other provisions shall remain valid and enforceable so long as the spirit of the Agreement as articulated herein is maintained.
9. This "General Release of All Claims" may be executed in multiple counterparts.

IN WITNESS WHEREOF, I have unto set my hand and seals this 9th day of January, 2013.

By: George E. Vondohlen
GEORGE E. VONDOHLEN
Dated: Frederick V. Gilgun
Witness as to his Signature:

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS

On this 9th day of January, 2013, before me, the undersigned notary public, personally appeared George Vondohlen, proved to me through satisfactory evidence of identification which was driver's license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Frederick V. Gilgun
Notary Public
My Comm. Expires:

